

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHEAST DIVISION**

HEATHER WATTS,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO.:
)	2:06-cv-1149-MEF
HOSPITALITY VENTURES, LLC,)	
)	
Defendant.)	

**PLAINTIFF’S REPLY TO DEFENDANT’S RESPONSE
TO PLAINTIFF’S MOTION TO STRIKE AFFIDAVITS
OF UNDISCLOSED WITNESSES IN THEIR ENTIRETY
AND MOTION FOR PROTECTIVE ORDER**

COMES Now the Plaintiff, Heather Watts, and pursuant to the Court’s order of November 19, 2007, files this reply to Defendant’s response to Plaintiff’s Motion to Strike Affidavits of Undisclosed Witnesses in Their Entirety and Motion for Protective Order. In support of her reply, Plaintiff states the following:

1. The Defendant does not deny in its response that it never listed nor disclosed Karen Kish and Carol Twardoch in its Rule 26 disclosures as witnesses having discoverable information.
2. Only after Plaintiff filed her motion to strike the deficient affidavits did the defendant then amend and supplement the name of name these

witnesses to the detriment of Plaintiff replying to Defendant's motion for summary judgment.

3. Further, the affidavits of Kish and Twardoch are deficient as previously stated in Plaintiff's motion to strike.
4. The fact Twardoch and Kish's names were mentioned previously does not place Plaintiff on notice that the witnesses have discoverable information to require the Plaintiff to depose these witnesses. Based on the deficient affidavits, Plaintiff is unable to ascertain the position the individuals hold in the company nor when hired.
5. The defendant is obligated per Federal Rules of Civil Procedure 26 to inform Plaintiff of witnesses they believe have discoverable information on which defendant intends to rely to support its claims.
6. There is nothing in Federal Rules of Civil Procedure 26(a)(1)(A) that states that a party not identify a prospective witness if the witness' name has been mentioned or even appears in court documents or testimony.
7. Finally, the defendant opines that the Plaintiff has violated the court's order because it did not communicate about a discovery motion violating Chief Magistrate Judge Coody's order. (See Def.'s Resp. p. 6).
8. There is no discovery dispute. The defendant failed to list two witnesses

and then used those witnesses' affidavits to support its motion for summary judgment.

9. The defendant has now responded that it inadvertently did not disclose Kish and Twardoch. However, the inadvertent failure does not cure the fact deficient affidavits.
10. Specifically, the affiants state they are employed by the defendant, but do not state their position nor title. It is not evident when these individuals became employed with Hospitality Ventures Management or how these individuals could testify as to the corporate structure of Hospitality Ventures, LLC, HVMI or Montgomery Ventures.
11. The affiants are neither corporate officers nor managerial employees of the defendant. The undisclosed affiants have no basis to testify to the matters contained in the affidavits produced to this court in support of the defendant's motion for summary judgment.

WHEREFORE, Plaintiff moves this Honorable Court to strike the deficient affidavits of undisclosed witnesses.

Respectfully submitted,

/s/ Alicia K. Haynes

Alicia K. Haynes

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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